

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs April 24, 2009

**GLEND A ANN SMITH v. LADDIE WALTER SMITH**

**Appeal from the Probate and Family Court for Cumberland County**  
**No. 2008-PF-252     Larry M. Warner, Judge**

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**No. E2008-02343-COA-R3-CV - FILED JUNE 9, 2009**

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In this divorce case, both Glenda Ann Smith (“Wife”) and Laddie Walter Smith (“Husband”) owned real property prior to their marriage. The parties entered into a prenuptial agreement providing that each party would retain their separate real property if the marriage ended. During the marriage, Wife executed a deed on her separate property and created a tenancy by the entireties between her and Husband. The “sole” purpose for executing this deed was so Wife’s property could be used as collateral for a loan on a mobile home that both parties purchased and which was placed on Husband’s separate real property. The Trial Court determined that Wife was entitled to the property that was her separate property prior to the marriage, and Husband was entitled to the property that was his separate property prior to the marriage as well as the mobile home. Husband appeals arguing that he should have been awarded an interest in the property that he and Wife held as tenants by the entireties. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Probate and Family Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. McCLARTY, J., joined.

John Milton Meadows, III, Livingston, Tennessee, for the Appellant, Laddie Walter Smith.

Brett A. York and Kevin R. Bryant, Crossville, Tennessee, for the Appellee, Glenda Ann Smith.

## MEMORANDUM OPINION<sup>1</sup>

### Background

Husband and Wife were married in January 1993. Approximately fifteen years later, Wife filed a complaint for divorce. No children were born of this marriage.

The final hearing in this case was held in September 2008 and judgment entered thereafter. The only issue on appeal surrounds the classification and division of certain property. In particular, the parties disagree over how to classify and distribute property owned by Wife prior to the marriage. The Trial Court apparently found that this property was Wife's separate property. Husband claims this property is marital property subject to equitable distribution.

While we have not been provided a copy of the transcript from the trial, the record does contain a Tenn. R. App. P. 24(c) statement of the evidence. In relevant part, the statement of the evidence provides:

The Court inquired as to [the] nature of the motion [to alter or amend the judgment] . . . whereupon [Husband's] counsel argued to the Court that the Court's Order entered on July 28, 2008, which completely divested [Husband] of his interest in certain marital property should be set aside . . . .

\* \* \*

It was undisputed that prior to the parties' marriage, they both executed a prenuptial agreement on September 24, 1992.

It was undisputed that the parties married each other in 1992<sup>2</sup> after they executed the prenuptial agreement.

It was undisputed that prior to her marriage to [Husband] in 1992, [Wife] owned jointly with her [first] ex-husband real estate consisting of a house and lot located at 722 Bent Tree Drive in Cumberland County, Tennessee.

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

<sup>2</sup> While the statement of the evidence indicates that the parties were married in 1992, the complaint provides that they were married in 1993.

It was undisputed that prior to the marriage, [Husband] owned real estate located at 1755 Tabor Loop in Cumberland County, Tennessee.

It was undisputed that on November 8, 1996, [Wife's] ex-husband . . . executed a Quit Claim Deed conveying his interest in the 722 Bent Tree Drive property to [Wife].

It was undisputed that on November 12, 1996, [Wife] executed a Deed Creating a Tenancy by the Entireties concerning the property located at 722 Bent Tree Drive whereby [Husband and Wife] would hold said property as tenants by the entireties. Said deed was recorded in the Register's Office of Cumberland County, Tennessee.

Counsel for [Husband] argued to the Court that it was error for the Court to classify this property as separate property of [Wife] and divest [Husband] of his marital interest in the Bent Tree Drive property, regardless of the prenuptial agreement, due to the act of [Wife] in executing the Deed Creating a Tenancy by the Entireties that [Wife] would be [estopped] by deed to refute that the Bent Tree property was marital property.

Counsel for [Wife] argued that the execution of the Deed Creating a Tenancy by the Entireties was in contradiction to the terms and provisions of the prenuptial agreement executed by the parties prior to their marriage and that the prenuptial agreement should govern the disposition of the property. Further, the Quit Claim Deed was executed so said property could be used for collateral for the mobile home the parties purchased and placed on [Husband's] property at 1755 Tabor Loop, Crossville, Tennessee.

That [Wife] is the sole equitable owner of 722 Bent Tree Drive in that [Husband] made no significant contributions to the acquisitions or preservation of same.

It was undisputed that the prenuptial agreement provided that the parties' separate property prior to the marriage would remain their separate property after marriage.

Based upon the arguments of counsel and the undisputed facts, the Court made its findings of fact as follows:

- a. That [Wife] . . . received the real property located at 722 Bent Tree Drive from her prior marriage although the same was not

conveyed by Deed until November 8, 1996. This was [Wife's] separate property.

- b. That [Husband] . . . received the real property located at 1755 Tabor Loop, which was owned by him prior to the parties' marriage.
- c. That [Wife] recorded a Deed Creating a Tenancy by the Entireties on or about November 15, 1996 on the 722 Bent Tree Drive property, which was in violation, and contrary to the prenuptial agreement. The sole purpose of said Deed was to use same as collateral on the mobile home on [Husband's] property located at 1755 Tabor Loop, Crossville, TN.
- d. That it is fair and equitable for [Husband] . . . to be granted the 1755 Tabor Loop property divesting [Wife] of any and all interest she may have in same. [Husband] shall hold [Wife] harmless from any and all debt associated with said property. Further, [Husband] shall receive the double-wide mobile home on said property and shall obtain refinancing for same removing [Wife's] separate property, 722 Bent Tree Drive, as collateral for said loan with Regions Bank. [Wife] is hereby divested of any and all interest in said double-wide with same being fully vested in [Husband] for which he shall hold [Wife] harmless from any and all debt associated therewith.
- e. That it is fair and equitable for [Wife] . . . to be granted the 722 Bent Tree Drive property as her sole and separate property, which was owned by her prior to her marriage to [Husband]. [Wife] shall hold [Husband] harmless from any and all debt associated with said property. . . . (original paragraph numbering omitted in part)

Husband appeals raising the following issue: "Whether or not the Trial Court erred in awarding real property to Wife as her separate property or as an equitable portion of marital property after she had executed a deed creating a tenancy by the entireties in the Husband."

### **Discussion**

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

At the outset, we note that it is unclear whether the Trial Court determined that the 722 Bent Tree Drive property was Wife's separate property and not subject to division, or whether it was marital property and that it was equitable to award that property solely to Wife. The first scenario we address assumes the Trial Court found the 722 Bent Tree Drive property was Wife's separate property and, therefore, not subject to equitable distribution. The undisputed facts establish that each party owned property prior to the marriage and that they executed a prenuptial agreement providing that each party would retain his or her separate property. However, after entering into the prenuptial agreement and getting married, Wife executed a deed to her separate property and created a tenancy by the entireties. It is this deed which Husband argues transformed Wife's separate property into marital property. Husband relies on the following statements from our opinion in *McClellan v. McClellan*, 873 S.W.2d 350 (Tenn. Ct. App. 1993):

Another panel of this Court recognized recently that separate property may become part of the marital estate if its owner treats it as if it were marital property. Professor Clark describes the doctrine of transmutation as follows:

[Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property. One method of causing transmutation is to purchase property with separate funds but to take title in joint tenancy. This may also be done by placing separate property in the names of both spouses. The rationale underlying both these doctrines is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed marital. The presumption can be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remain separate.

2 H. Clark, *The Law of Domestic Relations in the United States* § 16.2, at 185 (1987).

*McClellan*, 873 S.W.2d at 351 (quoting *Batson v. Batson*, 769 S.W.2d 849, 858 (Tenn. Ct. App. 1988)).

Returning to the present case, the Trial Court expressly found that “the *sole* purpose of said Deed was to use same as collateral” for the purchase of a mobile home. (emphasis added) If Wife's “sole” intent in executing the deed was to make the property available as use for collateral, it necessarily follows that she had no other intent, including an intent to create a gift to the marital estate. Based on what little information is contained in the record on appeal, we cannot conclude

that the evidence preponderates against the Trial Court's findings and ultimate conclusion that Wife did not intend to create a marital gift and that she effectively rebutted any presumption which arose by execution of the deed. Therefore, to the extent the Trial Court found that the 722 Bent Tree Drive property was Wife's separate property and not subject to equitable distribution, the judgment of the Trial Court is affirmed.

Next, we discuss the second possible scenario, i.e., that the Trial Court found the 722 Bent Tree Drive property to be marital property, but also found that it was equitable to award this property entirely to Wife. The two most valuable items at issue in this divorce were the 722 Bent Tree Drive property and the 1755 Tabor Loop property. The Bent Tree Drive property awarded to Wife was valued at \$72,500. The Tabor Loop property awarded to Husband was valued at \$80,300, which includes both the land and the mobile home. There was a \$25,000 outstanding mortgage on the mobile home. Husband admits in his brief that there was "[n]o proof or findings of fact with respect to the value of the Tabor Loop property in the absence of the marital mobile home." Husband also correctly acknowledges that the mobile home was marital property. All of the equity in that mobile home was awarded to Husband. Unfortunately, without knowing the value of the mobile home, which clearly is marital property, or the value of the Tabor Loop property without the mobile home, we cannot find the marital property distribution not to be equitable and in accord with the provisions of Tenn. Code Ann. § 36-4-121(c). In other words, because the record does not establish the value of the marital property Husband was awarded, the mobile home, and the value of the total marital property at issue, we cannot find that the marital property distribution was inequitable. Thus, to the extent that the Trial Court found that the 722 Bent Tree Drive property was marital property and that it was equitable for Wife to be awarded the entire interest in that property, the judgment of the Trial Court is affirmed.

### **Conclusion**

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Laddie Walter Smith, and his surety, for which execution was issue, if necessary.

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D. MICHAEL SWINEY, JUDGE